

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OFFICE OF CONSUMER ADVOCATE,  Complainant,  vs.  UKI COMMUNICATIONS, INC.,  Respondent.	DOCKET NOS. FCU-02-27 FCU-03-23 FCU-03-41
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**ORDER GRANTING MOTION FOR DEFAULT JUDGMENT, ORDERING  
PAYMENT OF DEFAULT JUDGMENT, AND CANCELLING THE HEARING**

(Issued June 8, 2004)

On June 3, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a motion to cancel the hearing and enter judgment by default. The Consumer Advocate stated that on February 24, March 1, and March 8, 2004, it had filed motions for entry of judgment by default, and that subsequent to the filings, UKI Communications, Inc. (UKI), had done nothing to cure the defaults or appear and defend the allegations<sup>1</sup>. The Consumer Advocate further stated the undersigned administrative law judge had deferred ruling on the motions for default. The Consumer Advocate further stated that UKI had failed to submit prefiled testimony and a brief when due and failed to comply with an order compelling

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<sup>1</sup> The Consumer Advocate also filed a motion for default on May 18, 2004.

discovery. The Consumer Advocate argued that UKI had been given due process and further resources and attention should not be expended on the files. UKI has not responded to the motion.

Iowa Code § 17A.12(3) (2003) provides that if a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. Iowa Code § 476.103(4)(a) provides that a service provider who violates the section, a rule adopted pursuant to the section, or an order issued pursuant to the section, is subject to a civil penalty of not more than ten thousand dollars per violation, which, after notice and opportunity for hearing, may be levied by the Board.

Whether UKI was properly served with notice is an issue. The notice of hearing issued April 26, 2004, and the order changing the hearing date issued May 5, 2004, were sent to UKI by ordinary mail pursuant to 199 IAC 1.8(4). The orders were sent to UKI at its three last known addresses in the Board files and were also sent via electronic mail to two email addresses. The mailed orders were returned to the Board as undeliverable. Prior to becoming formal complaint cases, Docket Nos. FCU-02-27, FCU-03-23, and FCU-03-41 were each the subject of an informal complaint file before the Board. In the three informal complaint files, letters were sent to UKI and responses were received from UKI using the same three addresses used to serve the notice of hearing and order changing the hearing date in FCU-02-27,

FCU-03-23, and FCU-03-41. UKI sent correspondence to the Board on letterhead with two of the three addresses in the informal complaint files. On February 3, 2004, UKI filed a letter with the Board on UKI letterhead bearing one of the addresses. Therefore, service of notice was proper.

UKI has failed to comply with numerous orders requiring it to appear and defend itself, including the requirement to file prefiled testimony and a prehearing brief. The only correspondence from UKI to the Board in the formal complaint files was the February 3, 2004, letter in which UKI stated it would be discontinuing intrastate toll service for all its commercial and residential customers in Iowa, it had notified its customers to choose another long distance provider, and it requested cancellation of its certificate of authority to transact business in Iowa. This notification is not adequate to avoid the requirement to comply with Board orders issued in this case. UKI has been given numerous opportunities to comply and has failed to do so. Continuing to require the Consumer Advocate to pursue prosecution of these dockets would be a waste of state resources. Repeated failure to comply with Board orders is a serious violation. Therefore, the motion for a default judgment should be granted in the amount of \$10,000 per docket, for a total of \$30,000.

**IT IS THEREFORE ORDERED:**

1. The Consumer Advocate's motion to cancel the hearing and enter judgment by default is hereby granted in the amount of \$10,000 per docket, for a total of \$30,000.

2. Payment of the default judgment is due in the office of the Executive Secretary of the Board within 30 days of the issuance of this order.

3. The hearing currently scheduled for Tuesday, June 15, 2004, is hereby cancelled.

4. A copy of this order will be delivered to the Consumer Advocate and sent by ordinary U.S. mail to UKI at the three last known addresses in the Board files. In addition, a copy of this order will be sent via electronic mail to [juancamilo@ukicomunications.com](mailto:juancamilo@ukicomunications.com) and to [monica@ukicomunications.com](mailto:monica@ukicomunications.com).

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 8<sup>th</sup> day of June, 2004.